$~R-731

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 12th January, 2018

\+ MAC.APP. 61/2013

NATIONAL INSURANCE COMPANY LTD ..... Appellant
Through: Ms. Neerja Sachdeva, Advocate

versus

BIRMA DEVI & ORS ..... Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Babu Ram @ Babu Lal, then aged 49 years, died due to injuries suffered in a motor vehicular accident that occurred on 07.07.2007 due to negligent driving of motor vehicle described as one bearing registration No. UP-78T-4291, admittedly insured against third party risk with the appellant (insurer) for the period in question. On the accident claim case (MACT Suit No.285/10), instituted on 28.02.2008 by his wife and five other members of the family dependent upon him, they being first to sixth respondents herein (collectively, the claimants), the Tribunal held inquiry and, by judgment dated 04.07.2012, awarded compensation in the total sum of Rs.13,41,328/-, fastening the liability on the appellant (insurer) to pay with interest at 7.5% per annum, calculating it thus:

Compensation on account of loss of dependency	Rs.13,16,328/-
Funeral expenses	Rs.5,000/-
On account of Loss of Love & Affection	Rs.10,000/-
On account of contribution towards loss of Estate	Rs.10,000/-
Total:	Rs.13,41,328/-

2. The finding about the driver of the insured vehicle having been negligent has remained unimpeached and unchallenged and has attained finality. The insurer, by the present appeal, questions the calculation of the compensation submitting that there is no basis to the conclusion of the Tribunal that the deceased was earning Rs.7,500/- per month and that the addition of future prospects of increase in income to the extent of 50% was inappropriate.

3. The appeal was put in the list of '*Regulars*' as per order dated 26.07.2016. On it being called out on its own turn, there is no appearance on behalf of the claimants. The counsel for the insurer/appellant has been heard and the record perused.

4. The grievance about the conclusion that the deceased was earning Rs.7,500/- per month cannot be accepted as the same was based on the evidence of Smt. Birma Devi (PW-1) which remained unchallenged, but the element of future prospects of increase in income to the extent of 50% does deserve to be corrected in view of ruling of a Constitution Bench of the Supreme Court rendered on 31.10.2017 in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors.* Given the fact that the deceased was self-employed and that he was 49 years old, such element has to be

restricted to 25%. The loss of dependency is, thus, re-calculated as (7500 X 125/100 X 3/4 X 12 X 13) Rs.10,96,875/- rounded off to Rs.10,97,000/-.

5. It is noted that the non-pecuniary damages awarded by the Tribunal and the rate of interest levied (7.5% per annum) are on the lower side. Following the dispensation in *Pranay Sethi* (*supra*), in lieu of the awards towards non-pecuniary heads of damages granted by the Tribunal, Rs.40,000/- towards loss of consortium and Rs.15,000/- each towards funeral expenses and loss to estate are added. Thus, total compensation is worked out as Rs.(10,97,000 + 40,000 + 15,000 + 15,000) Rs.11,67,000/- (Rupees Eleven Lakhs Sixty Seven Thousand Only). The award is modified accordingly.

6. Following the consistent view taken by this Court, the rate of interest is increased to 9% (nine per cent) per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.]

7. By order dated 22.01.2013, the insurance company had been directed to deposit 75% of the awarded amount with up-to-date interest accrued thereon and out of such deposit, 50% was permitted to be released to the claimants and balance to be kept in fixed deposit receipt. The Registry shall calculate the balance amount payable to the claimants in terms of the modification ordered above and refund the excess, if any, from the remainder to the insurance company. Conversely, if the amount deposited is deficient, the insurance

company will be obliged to deposit the same with the Tribunal within 30 days making it available to be released to the claimant.

8. The statutory amount shall be refunded to the insurance company after proof of award having been satisfied is shown.

9. The appeal stands disposed of with these observations.

R.K.GAUBA, J.

JANUARY 12, 2018
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